

ORIGINAL

Before the
Federal Communications Commission

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Review of the Commission's)
Regulations and Policies)
Affecting Investment in)
the Broadcast Industry)

MM Docket No. 92-51

To: The Commission

ORIGINAL
FILE

REPLY COMMENTS OF TAK COMMUNICATIONS, INC.

Tak Communications, Inc. ("TakCom"), by its attorneys and pursuant to Section 1.419 of the Commission's Rules, hereby replies to the comments of Media Venture Partners, Sheppard, Mullin, Richter & Hampton, American Security Bank, the parties listed in the comments prepared by Arent, Fox, Kintner, Plotkin & Kahn, BTMI, Inc., Greyhound Financial Corp. and O'Melveny & Myers (collectively, the "Commenters") on the issue of security interests and reversionary interests in licenses issued by the Commission. In support whereof, the following is shown:

The Commenters all appear to recognize that there is an inherent conflict between the provisions of the Communications Act of 1934, as amended (the "Act") and the provisions of the Uniform Commercial Code (the "UCC") concerning security interests. However, they focus only on the provisions of the UCC for remedies in the event of a default, urging the Commission to develop a "limited"

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security interest to reconcile the UCC's default remedies with the Act. (Just what constitutes a "limited" security interest varies from one set of comments to the next.) However, as pointed out in its Comments, TakCom believes there is an even more fundamental inconsistency between the Act and the UCC. A UCC security interest is a derivative property interest in the collateral that is indefinite in duration and survives the assignment of the collateral to a third party. TakCom believes the plain language of Sections 301, 309(h) and 310(d) precludes recognition of such an interest in a broadcast license. Although the Commenters offer the broadest possible reading of Bill Welch, 3 FCC Rcd 6502 (1988), that case simply did not address this fundamental conflict between the UCC and the Act.

The Commenters are largely silent on the issue of the protections available to broadcast lenders (such as stock pledges or receivership) outside of the bankruptcy context. Thus, there does not seem to be substantial concern about the availability of security interests other than in bankruptcy situations. Several Commenters argue that the interplay between the FCC's current policy prohibiting security interests and the provisions of federal bankruptcy law is creating greater uncertainty and risk for broadcast loans than for other types of loans. However, the current FCC policy has been in effect from the time the Act

was adopted. A request to change either the Act or federal bankruptcy law must be directed to Congress.

Several Commenters refer to In re Ridgely Communications, Inc., 1992 Bankr. Lexis 567 (1992) as offering a tenable middle ground, in that it recognized a security interest in the proceeds from the sale of a broadcast license. However, the Ridgely analysis is flawed. Ridgely purports to distinguish between a security interest in a license and a security interest in the proceeds of the sale of a license. That is the type of distinction that other courts have rejected, on the theory there cannot be a security interest in the proceeds of a sale of an asset if there was not a valid security interest in the asset itself. In re Lehl, 79 B.R. 880 (Bankr. D. Neb. 1987).

While the particular equities of the Ridgely case may have led the court to adopt its distinction, there is a significant question as to its validity. Moreover, even if the Ridgely analysis were accurate, in many bankruptcies there is no sale of the stations, but only a corporate reorganization. In those cases, lenders will still be seeking recognition of a security interest in a license, rather than merely in the proceeds from a sale of the station. In TakCom's view, the explicit provisions of the Act forbid security interests not only in the licenses themselves, but also in the rights thereunder.

Control over broadcast stations -- whether that control is direct or indirect and in whatever manner exercised -- goes to the heart of the regulatory scheme crafted by Congress. Several parties commenting in this proceeding again voiced the oft-repeated concern in the case law that a lender possessing a security interest in an FCC licenses "could be expected to attempt to exert control over the operation of the station" (Comments of Motion Picture Association of America) and that "[a] lender which felt that it had a property interest in a station could be expected to attempt to exert control over the operation of the station." (Comments of National Association of Black Owned Broadcasters) Other Commenters, e.g., MNC Financial (American Security Bank), attempted to allay fears that "creditors will attempt to exercise influence over a borrower station" and that "lenders will not be encouraged to help stations work through temporary problems."

Creditor attempts to exercise some measure of control over -- or to otherwise influence -- the operations of broadcast stations whose licenses and other FCC authorizations could eventually be legally encumbered by liens are not just hypothetical worries. The Commission's historic concern over the irresistible temptation for lending institutions, with millions of loaned dollars on the line, to overreach, interfere and meddle with the affairs of

defaulting licensee-debtors is well founded. Financial institutions routinely assign non-performing loans, including troubled broadcast loans, to very tough, pragmatic and result-oriented liquidating officers. This is particularly true where the senior, secured lenders are not just national commercial banks with a long history of involvement in broadcasting matters, but, as is the case with the TakCom credit, are "vulture" funds which have purchased bank credits at a fraction of the face amount of the principal. It is the responsibility of the workout groups and venture capitalists not only to conserve the senior lenders' collateral (which is viewed as the entire station), but also to take whatever steps are deemed necessary to bring about a quick recovery of funds and a handsome return on invested capital. Where there is even the slightest disenchantment with station performance, lender workout groups can deal harshly with existing management -- if they have a security interest in an FCC license.

On January 3, 1991, TakCom, the licensee and debtor-in-possession, sought protection from its creditors under the provisions of Chapter 11 of the United States Bankruptcy Code. In connection with the U.S. Bankruptcy Court's approval of TakCom as debtor-in-possession, applications were also made seeking FCC consent to the

transfer of control of the licensee to the debtor-in-possession. Notwithstanding the legal transfer of control to the debtor in possession, and TakCom's continuing operation of its radio and television the stations under terms of its licenses, the creditors have attempted to interfere with the licensee's management and control functions at its radio and television stations.

For example, on June 24, 1992, group radio and television station owner Clear Channel Communications, Inc. ("Clear Channel") -- the senior bank group's apparent designee to operate the TakCom stations only in the event the bank's competing Plan of Reorganization is ultimately confirmed by the bankruptcy court -- released to the media a statement (attached to these reply comments as Exhibit A) declaring both its appointment and plans to operate the TakCom group:

"L. Lowry Mays, President and Chief Executive Officer of Clear Channel Communications, Inc. announced today that the Senior Lenders of Tak Communications, Inc. presently anticipate that they would nominate Clear Channel Communications as Managing Agent if the Plan of Reorganization that they have proposed is confirmed by the United States Bankruptcy Court for the Western District of Wisconsin....Mays concluded by saying the Company views this as an opportunity to take advantage of the Company's greatest asset: its management team."

However, no senior lender Plan of Reorganization has been confirmed and other competing Plans of Reorganization have

been proposed by the subordinated creditors and by the licensee.

This brazen, predatory and self-congratulatory public announcement by the banks' agent, unauthorized in any form whatsoever by the legal licensee, has caused problems at the fully functioning TakCom radio and television stations. The Clear Channel announcement has been widely disseminated and has caused considerable anxiety at the TakCom stations where the licensee has worked hard to retain valuable management personnel and other talent in the face of ongoing reorganization efforts in the Chapter 11 proceeding. This effort to motivate and retain valuable employees is extremely difficult in a Chapter 11 setting, and it is now made much more difficult by the Banks' designated agent, Clear Channel, making a public announcement of its "management team" plans for a reorganized TakCom.

It is exactly this kind of over-reaching behavior which the Commission has cause to worry about where lenders, strengthened by holding a perfected security interest in an FCC license, would feel greater justification in meddling, interfering and involving themselves in station operations.

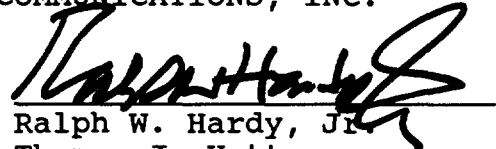
For these reasons TakCom urges the Commission to find there is no basis for overturning the current prohibition on security interests in broadcast licenses. If

current policy is reversed, the new policy should apply only to credit or security agreements entered into after the effective date of the new policy.

Respectfully submitted,

TAK COMMUNICATIONS, INC.

By:



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July 13, 1992

EXHIBIT A



CLEAR CHANNEL COMMUNICATIONS, INC.

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NEWS RELEASE

San Antonio, Texas, June 24, 1992....L. Lowry Mays, President and Chief Executive Officer of Clear Channel Communications, Inc. announced today that the Senior Leaders of TAK Communications, Inc. presently anticipate that they would nominate Clear Channel Communications as Managing Agent if the Plan of Reorganization that they have proposed is confirmed by the United States Bankruptcy Court for the Western District of Wisconsin.

TAK Communications owns five television stations and three radio stations. The television stations are located in Buffalo, New York; Honolulu, Hawaii; Madison, Wisconsin; Wausau, Wisconsin and La Crosse, Wisconsin. The radio stations are located in Philadelphia, Pennsylvania; Miami/Pt. Lauderdale, Florida and Champaign, Illinois.

Mays concluded by saying the Company views this as an opportunity to take advantage of the Company's greatest asset: its management team.

Clear Channel Communications, Inc. is a San Antonio based radio and television broadcasting company operating 17 radio stations and six television stations in 16 markets. The common share price is published daily on the American Stock Exchange under the stock symbol CCU.

CERTIFICATE OF SERVICE

I, Patricia C. Wilson, hereby certify that on this 13th day of July, 1992, copies of the foregoing "Reply Comments Of Tak Communications, Inc." have been served by first-class United States mail, postage prepaid, upon the following:

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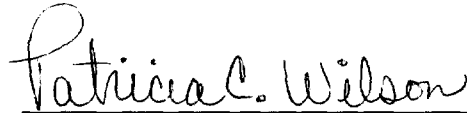
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